



U.S. Department of Justice

United States Attorney
Southern District of New York

MEMO ENDORSED

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

February 28, 2008

BY FACSIMILE

The Honorable Colleen McMahon
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Joseph McGirl
06 Cr. 1001 (CM)

2/28/08
Correction made
in judgment
[Signature]

Dear Judge McMahon:

It has come to the parties' attention that the sentence imposed on February 26, 2008, on the above-referenced defendant was illegal insofar as the Court imposed the six-month term of weekend imprisonment as a custodial sentence per se, to be followed by a two-year term of supervised release.

Title 18, United States Code, § 3563(b)(10) authorizes the Court to place a defendant in weekend custody of the Bureau of Prisons as a condition of a term of probation. Title 18, United States Code, § 3581, which governs sentences of imprisonment, however, does not provide for weekend imprisonment. Supervised release, pursuant to Title 18, United States Code § 3583, may be imposed only if it follows a term of imprisonment.

Accordingly, to effect Your Honor's sentencing objectives, the Government respectfully suggests, without objection from the defendant, that the Court impose a sentence of 30 months' probation, to include weekend custody during the first six months of probation.

Rule 35(a) of the Federal Rules of Criminal Procedure permits the Court to correct clear error in a sentence within seven days after sentencing. Under Rule 43(b)(4), a defendant need not be present when a "proceeding involves the correction or

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Hon. Colleen McMahon

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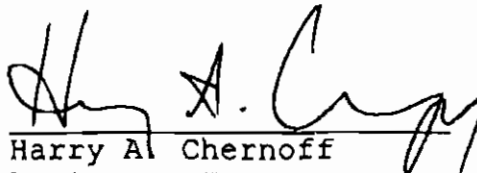
reduction of a sentence under Rule 35." Moreover, the defendant has indicated through counsel that, because he has no objection to the correction and amendment of his sentence, he waives any right he may have to be present for the proceeding.

Accordingly, the parties respectfully request that Your Honor amend the sentence and the judgment of conviction to correct the error set forth above without a further court appearance. The Government respectfully notes, however, that the sentence correction under Rule 35(a) must be accomplished within seven days of the imposition of sentence, i.e. by Friday, March 7, 2008.

Respectfully submitted,

MICHAEL J. GARCIA
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By:


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cc: Diarmuid White, Esq. (by facsimile)